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EXAMINER	
COULTER, KENNETH R	

ART UNIT	PAPER NUMBER
2141	

DATE MAILED: 06/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/792,145	OULU ET AL.	
	Examiner	Art Unit	
	Kenneth R. Coulter	2141	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 1-21 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 1-21 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on 03 March 2004 is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date 3/3/04; 6/29/04.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1 – 21 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 – 39 of copending Application No. 10/057,295. Although the conflicting claims are not identical, they are not patentably distinct from each other because of the detailed mapping below.

Claim 1 of the present Application maps closely to claims 1, 6, 13, 20, and 25 of '295.

Claim 2 of the present Application maps closely to claims 4, 15, and 24 of '295.

Claim 3 of the present Application maps closely to claims 19 and 28 of '295.

Claim 4 of the present Application maps closely to claims 1, 6, 13, 20, and 25 of '295.

Claim 5 of the present Application maps closely to claims 1, 6, 13, 20, and 25 of '295.

Claim 6 of the present Application maps closely to claims 1, 17, 20, and 25 of '295.

Claim 7 of the present Application maps closely to claims 13 and 17 of '295.

Claim 8 of the present Application maps closely to claims 13 and 17 of '295.

Claim 9 of the present Application maps closely to claims 25 and 27 of '295.

Claim 10 of the present Application maps closely to claims 1 and 3 of '295.

Similarly, claims 11 – 21 of the present Application maps closely to claims of '295.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 1 – 21 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 – 3, 6 – 19, and 22 – 34 of copending Application No. 10/038,098. Although the conflicting claims are not identical, they are not patentably distinct from each other because of the detailed mapping below.

Claim 1 of the present Application maps closely to claims 1, 13, 25, and 27 of '098.

Claim 2 of the present Application maps closely to claims 1, 13, 25, and 27 of '098.

Claim 3 of the present Application maps closely to claims 1, 2, 11, 13, and 16 of '098.

Claim 4 of the present Application maps closely to claims 1, 13, 25, and 27 of '098.

Claim 5 of the present Application maps closely to claims 1, 13 – 17, and 27 of '098.

Claim 6 of the present Application maps closely to claims 1, 13 – 17, and 27 of '098.

Claim 7 of the present Application maps closely to claims 1, 13 – 17, and 27 of '098.

Claim 8 of the present Application maps closely to claims 1, 13, 25, and 27 of '098.

Claim 9 of the present Application maps closely to claims 1, 13, 25, and 27 of '098.

Claim 10 of the present Application maps closely to claims 1, 13, 25, and 27 of '098.

Similarly, claims 11 – 21 of the present Application maps closely to claims of '098.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

3. Claims 1 – 21 rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 - 24 of U.S. Patent No. 6,738,933. Although the conflicting claims are not identical, they are not patentably distinct from each other because of the detailed mapping below.

Claim 1 of the present Application maps closely to claims 1, 10, 13, 17, 18 and 19 of '933.

Claim 2 of the present Application maps closely to claims 10 and 11 of '933.

Claim 3 of the present Application maps closely to claims 1, 2, 10, 12, and 17 of '933.

Claim 4 of the present Application maps closely to claims 10, 11, 15, and 16 of '933.

Claim 5 of the present Application maps closely to claims 10, 11, 15, and 16 of '933.

Claim 6 of the present Application maps closely to claims 10, 11, 15, and 16 of '933.

Claim 7 of the present Application maps closely to claims 17, 20, and 21 of '933.

Claim 8 of the present Application maps closely to claims 17, 20, and 21 of '933.

Claim 9 of the present Application maps closely to claims 17, 20, and 21 of '933.

Claim 10 of the present Application maps closely to claims 1, and 7 – 11 of '933.

Similarly, claims 11 – 21 of the present Application maps closely to claims of '933.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1 – 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Meyer et al. (U.S. Pat. No. 6,289,378) (Web Browser Remote Computer Management System).

5.1 Regarding claim 1, Meyer discloses a system for analyzing the operation of a web site system that comprises an application server, the system comprising:

an agent computer configured to access the web site system as a emulated user thereof to execute a transaction that invokes the application server (Abstract; Fig. 1; col. 7, lines 45 – 65);

a probe that runs on the application server and monitors the application server during execution of the transaction, wherein the probe generates and reports data indicative of execution times of each of a plurality of application components executed by the application server as part of the transaction (Abstract; Fig. 1; col. 7, lines 45 – 65); and

a reports server that receives said data indicative of the execution times of each of the plurality of application components, and provides a breakdown indicating an amount of time spent by each of the plurality of application components executing the transaction (Abstract; Fig. 1; col. 7, lines 45 – 65 "test and record the response time from the client to the server in the context of the application").

5.2 Per claim 2, Meyer teaches the system of claim 1, wherein the agent computer is configured to initiate execution of the transaction by sending to the web site system a request message that contains encoded data indicating that the transaction should be monitored by the probe, and wherein the probe is responsive to the encoded data by monitoring execution of the transaction on the application server (Abstract; Fig. 1; col. 7, lines 45 – 65).

5.3 Regarding claim 3, Meyer discloses the system of claim 1, wherein the agent

computer measures and reports transaction response times associated with execution of the transaction, and the reports server presents said transaction response times in association with said breakdown, such that an operator may assess an impact of a particular application component on transaction response times experienced by web site users (Abstract; Figs. 1, 5, 12; col. 7, lines 45 – 65).

5.4 Per claim 4, Meyer teaches the system of claim 1, wherein the probe includes a code instrumentation component that dynamically instruments the application components at load time (Abstract; Figs. 1, 7; col. 6, lines 20 – 56).

5.5 Regarding claim 5, Meyer discloses the system of claim 4, wherein the code instrumentation component selects application components to instrument based on configuration data specified by a user (Abstract; Figs. 1, 7; col. 6, lines 20 – 56).

5.6 Per claim 6, Meyer teaches the system of claim 4, further comprising a user interface that displays a listing of application components installed on the application server, and provides functionality for an operator to select specific application components from the listing to instrument for monitoring (Abstract; Figs. 1, 7; col. 6, lines 20 – 56).

5.7 Regarding claim 7, Meyer discloses the system of claim 1, wherein the data generated and reported by the probe indicates execution times of each of a plurality of

methods of an application component, and the reports server displays a breakdown of time spent by each such method on the transaction (Abstract; Figs. 1, 5, 12; col. 7, lines 45 – 65).

5.8 Per claim 8, Meyer teaches the system of claim 1, wherein the reports server provides said breakdown separately for each of a plurality of transactions (Abstract; Figs. 1, 5, 12; col. 7, lines 45 – 65).

5.9 Regarding claim 9, Meyer discloses the system of claim 1, wherein the reports server displays within said breakdown at least the following: a servlet time, a session EJB time, and an entity EJB time (Abstract; Figs. 1, 5, 12; col. 7, lines 45 – 65).

5.10 Per claim 10, Meyer teaches the system of claim 1, further comprising a controller that provides functionality for assigning transactions to the agent computer, wherein the controller provides an option for a user to specify whether a transaction is to be monitored by the probe (Abstract; Figs. 1, 5, 12; col. 7, lines 45 – 65).

5.11 Regarding claims 11 – 21, the rejection of claims 1 – 10 under 35 USC 102(b) (paragraphs 5.1 – 5.10) applies fully.

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1 – 21 are rejected under 35 U.S.C. 102(e) as being anticipated by Fraenkel et al. (U.S. Pat. Pub. No. 2002/0198985) (Post-Deployment Monitoring and Analysis of Server Performance)

The applied reference has a common assignee and one inventor, Ido Sarig, with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

7.1 Regarding claim 1, Fraenkel discloses a system for analyzing the operation of a web site system that comprises an application server, the system comprising:

an agent computer configured to access the web site system as a emulated user thereof to execute a transaction that invokes the application server (Abstract; Fig. 1; paragraphs 11, 49);

a probe that runs on the application server and monitors the application server during execution of the transaction, wherein the probe generates and reports data indicative of execution times of each of a plurality of application components executed by the application server as part of the transaction (Abstract; Fig. 1, 17, 20, 21, 25; paragraphs 11, 49); and

a reports server that receives said data indicative of the execution times of each of the plurality of application components, and provides a breakdown indicating an amount of time spent by each of the plurality of application components executing the transaction (Abstract; Fig. 1, 17, 20, 21, 25; paragraphs 11, 49).

7.2 Per claim 2, Fraenkel teaches the system of claim 1, wherein the agent computer is configured to initiate execution of the transaction by sending to the web site system a request message that contains encoded data indicating that the transaction should be monitored by the probe, and wherein the probe is responsive to the encoded data by monitoring execution of the transaction on the application server (Abstract; Fig. 1, 17, 20, 21, 25; paragraphs 11, 49).

7.3 Regarding claim 3, Fraenkel discloses the system of claim 1, wherein the agent computer measures and reports transaction response times associated with execution

of the transaction, and the reports server presents said transaction response times in association with said breakdown, such that an operator may assess an impact of a particular application component on transaction response times experienced by web site users (Abstract; Fig. 1, 17, 20, 21, 25; paragraphs 11, 49).

7.4 Per claim 4, Fraenkel teaches the system of claim 1, wherein the probe includes a code instrumentation component that dynamically instruments the application components at load time (Abstract; Fig. 1, 17, 20, 21, 25; paragraphs 11, 49).

7.5 Regarding claim 5, Fraenkel discloses the system of claim 4, wherein the code instrumentation component selects application components to instrument based on configuration data specified by a user (Abstract; Fig. 1, 17, 20, 21, 25; paragraphs 20, 76).

7.6 Per claim 6, Fraenkel teaches the system of claim 4, further comprising a user interface that displays a listing of application components installed on the application server, and provides functionality for an operator to select specific application components from the listing to instrument for monitoring (Abstract; Fig. 1, 17, 20, 21, 25; paragraphs 20, 76).

7.7 Regarding claim 7, Fraenkel discloses the system of claim 1, wherein the data generated and reported by the probe indicates execution times of each of a plurality of

methods of an application component, and the reports server displays a breakdown of time spent by each such method on the transaction (Abstract; Fig. 1, 17, 20, 21, 25; paragraphs 71, 76).

7.8 Per claim 8, Fraenkel teaches the system of claim 1, wherein the reports server provides said breakdown separately for each of a plurality of transactions (Abstract; Fig. 1, 17, 20, 21, 25; paragraphs 71, 76).

7.9 Regarding claim 9, Fraenkel discloses the system of claim 1, wherein the reports server displays within said breakdown at least the following: a servlet time, a session EJB time, and an entity EJB time (Abstract; Fig. 1, 17, 20, 21, 25; paragraphs 71, 76).

7.10 Per claim 10, Fraenkel teaches the system of claim 1, further comprising a controller that provides functionality for assigning transactions to the agent computer, wherein the controller provides an option for a user to specify whether a transaction is to be monitored by the probe (paragraph 96).

7.11 Regarding claims 11 – 21, the rejection of claims 1 – 10 under 35 USC 102(e) (paragraphs 7.1 – 7.10) applies fully.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Reps et al. U.s. Pat. No. 6,070,190 Client-Based Application Availability and Response Monitoring and Reporting for Distributed Computing Environments
A monitoring system for monitoring, from a client computer, the performance of an application program residing on a server.

Luzzi et al. U.S. Pat. No. 6,321,263 Client-Based Application Availability
A distributed computing environment for monitoring, from a client computer, the system performance of an application program residing on a server (related to Reps reference above).

Chen et al. U.S. Pat. No. 5,812,780 Method, System, and Product for Assessing a server Application Performance
A method for assessing the performance of a server application.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kenneth R. Coulter whose telephone number is 571 272-3879. The examiner can normally be reached on 5 4 9.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharia can be reached on 571 272-3880. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

KENNETH R. COULTER
PRIMARY EXAMINER

krc